

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 103 and 106 are requested to be cancelled.

Claim 102, 104, 105, 107-112, 114, 115, and 118 are currently being amended.

Claims 119 and 120 are being added.

After amending the claims as set forth above, claims 77-102, 104, 105 and 107-120 are now pending in this application, of which Claims 77 and 102 are independent.

Interview

An interview was conducted between examiner Loney and attorney Burch on April 5, 2005. Inherency of the belt in Holman was discussed as it applied to the rejection of Claim 77. Stanger, Holman, and Stecklein were discussed in view of Claims 102 and 106.

Double Patenting

Claims 77-101 were provisionally rejected under the judicially created doctrine of double patenting. Since the rejection is provisional and since double patenting applies to the claims in their final form, Applicant will address this rejection at such time in the future as necessary by appropriate action.

Claim Rejections – 35 USC § 102

A. By Stecklein

In section 5 of the Office Action, Claims 77-80, 82, 83, 88, 90, 92, 93, 100, and 101 were rejected under 35 U.S.C. § 102(e) as being anticipated by Stecklein et al. (4332576). Anticipation requires that a piece of prior art disclose every feature of the claim either explicitly or inherently. Stecklein fails to disclose at least one element of the rejected claims, and thus does not anticipate these claims.

Claim 77 recites “a belt for use in a high temperature food processing apparatus configured to process a food product ... wherein the belt is configured to move the food product through the high temperature food processing apparatus.” Stecklein does not teach at least this element of Claim 77. Thus, Stecklein does not anticipate Claim 77 and withdrawal of the rejection is respectfully requested.

Claims 78-80, 82, 83, 88, 90, 92, 93, 100, and 101 depend from Claim 77 and withdrawal of the rejection of these claims is respectfully requested for at least the same reasons as Claim 77.

B. By Holman

In Section 6 of the Office Action, Claims 77-80, 83, 88, 90, 92, 93, 95, 100, 102-108, and 115 were rejected under 35 U.S.C. § 102(b) as being anticipated by Holman et al (4386558). As noted in the Office Action, Holman does not describe any specific structure of the belt in its apparatus. Thus, critical to the rejection of the claims was a statement that the examiner believed that Holman inherently teaches a belt made from a reinforcing material with coatings on both sides. Applicants submit that Holman does not inherently teach belt made from a reinforcing material with coatings on both sides, since such a belt does not necessarily result from the disclosed convection cooking equipment disclosed in Holman.

In order for a characteristic to be inherent in a reference, it must be shown “that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art” MPEP 2112 (underline in original). The characteristics of the belt described by the examiner as inherently disclosed do not necessarily flow from the disclosure of Holman. All of the oven/toaster references that cite Holman as prior art¹ which themselves recite a conveyor belt² and disclose the structure of the belt each disclose that the conveyor belts are a metal belts. In particular:

¹ A search was done on the PTO website for “ref/4386558”.

² The search was narrowed to ref/4386558 and (belt or conveyor)

6,252,201

January 6, 2000

Small fast acting conveyor toaster oven

“Radiant heat is provided by upper and lower "Calrod" elements 42, 44 for suitably heating the top and bottom, respectively, of the food product. The food product itself rests on a conveyor belt 48 which travels between "Calrod" elements 42, 44 and at a speed coordinated with the oven heat so that the food product is properly cooked when it reaches the far end of conveyor 48 and drops onto a slide that returns the food product to space 24. Preferably, the conveyor 48 is a wire link conveyor.”

5,746,116

April 28, 1997

Rapid toasting apparatus

The toasting apparatus is equipped with a flexible metallic variable speed conveyor belt 27 for conveying products through the apparatus. The metallic conveyor belt 27 may include a master link 28 for assembling the belt.”

5,686,004

April 29, 1996

Pizza oven with conveyor

“Referring to FIGS. 7 through 11, which illustrate a conveyor section 200 of the invention, the conveyor section 200 comprises a continuous, heat-resistant, flexible belt 202 that is formed into an elongated, continuous loop 203... The flexible belt 202 comprises interlocking wires 218 looped as is conventional.”

5,473,975

December 12, 1995

Conveyor toaster oven

“With the entry rack 24 in this loading position, all that the worker has to do is to fill it with slices of bread, or the like, and gravity automatically feeds them continuously onto the wire link conveyor belt 54 (FIG. 2).”

“The wire link conveyor belt 54 (FIG. 2 and 4) is formed by a number of wires which link together to form a belt which fits over sprocket wheels 53 on horizontal shafts (FIGS. 1, 4 and 9) at the front and back of the oven. These linked wires are preferred so that crumbs will fall through the belt 54 and into the crumb tray 26.”

4,951,648
March 23, 1989
Conveyor oven

"The cabinet 10 has a rectangular, generally horizontal slot 14 (FIG. 3) through opposite side walls forming the oven tunnel through which a conventional framed motorized continuous stainless steel chain link belt assembly 16 is received."

4,616,562
October 14, 1986
Ventilation system for pizza ovens

"In such an oven, the cooking enclosure 150 is open at both its front 152 and its rear 154, and includes a plurality vertically spaced horizontally moving food-handling conveyors 156, 158, and 160," but is otherwise silent as to structure of the conveyors.

4,465,701
August 14, 1984
Method of convection cooking of food

Divisional application of Holman.

Since all of the toaster/oven references listed above disclose that the belts for conveying products in the disclosed ovens are metal conveyor belts, and since the disclosed metal belts do not include a reinforcing material with coatings on both sides, the structure asserted as being inherent in the Office Action (a reinforcing material with coatings on both sides) does not necessarily flow from the teaching in Holman of using a belt 52 in an oven 10. Since the belt as recited in the Office Action does not necessarily flow from the disclosure of Holman, such a belt would not be inherent in Holman.

Since this rejection is based on the inherency of the properties of the belt of Holman, and since the belt of Holman does not inherently have the recited properties, withdrawal of this rejection is respectfully requested.

Claim rejections – 35 USC § 103

In Section 8 of the Office Action, Claims 77-118 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stanger et al (5931083) in view of either Holman et al. or Stecklein et al.

A. Claims 77-101

One of ordinary skill in the art would not have been motivated by Holman or Stecklein to modify the belt of Stanger et al in a manner that would have rendered the belt claimed in Claim 77 obvious. Holman is entirely silent as to the nature of the belt of Holman and is silent as to any motivation to modify the belt of Stanger.

Stecklein is silent as to the reason for including projections 28, but cites US Pat No. 4,011,766 to Waugh in its background. Col. 1, line 15 of Stecklein. Waugh teaches that projections 28 would be included to increase flexibility of the thick v-type belts. Col. 1, lines 16-25 of Waugh. Since the belt of Stanger appears not to suffer from being too thick, the motivation to include projections 28 in Stecklein would be less likely to motivate one of ordinary skill in the art to include such projections in the belt of Stanger. See Col. 4, lines 9-12 and Col. 7, lines 63-65 of Stanger.

Since one of ordinary skill in the art would not have been motivated to combine Stanger with Holman or Stecklein to arrive at the subject matter claimed in Claim 77, withdrawal of the rejection of these claims is respectfully requested. Claims 78-101 depend from Claim 77 and would be allowable for at least the same reason as Claim 77.

B. Claims 102-118

Claim 102 (as amended) recites “the belt and a heating element of the heating zone are arranged such that the belt contacts a first face of food items and the heating zone caramelizes a second face of food items.” The Office Action cites Stanger for teaching this element of Claim 102. Stanger does not teach this element. Rather, in Stanger the same face of bun B that is in contact with belt 204 is heated by heated platen 218. See Col. 7, lines 53-59 and Fig. 13. Neither Stecklein nor Holman provide a motivation to modify Stanger in a manner

that would teach the missing elements of Claim 102 (as amended); a main feature of Stanger is that grilling or carmelization occurs in the closed, sealed environment of the apparatus as constructed in Stanger. See Col. 10, lines 32-37 of Stanger. Thus, Claim 102 (as amended) is not believed to be rendered unpatentable by Stanger, Holman, Stecklein, or the combination thereof.

Information Disclosure Statement

The references with a line through them were indicated as not being considered because no date was included. From a review of the initialed form PTO/SB/08, it appears that dates were included for A30 and A32 of the document having the number 001.1743622.1 in the lower right corner.

Additionally, a supplementary information disclosure statement is being submitted herewith to include the patent references discussed above.

Amendments and New Claim

Claim 102 was amended to include the element recited in Claim 106. Claims 104-112, 114, 115, and 118 were amended to depend from Claim 102 since the claims from which they previously depended have been cancelled.

Amendment to Claim 118 and new Claims 119 and 120 are supported in the specification by at least paragraphs [0009] and [0054] of the application.

These claims are believed to be in condition for allowance.

Conclusion

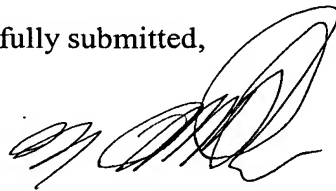
Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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